its rules to allow an operator to obtain prior approval for a system rebuild or network upgrade. Under the procedures envisioned by Sammons and TCA, an operator would propose the upgrade to the authority entitled to regulate its rate with a showing of the revenue required to finance the upgrade. The rate authority would then approve both the upgrade and the increased rate necessary to finance the upgrade. At the time of approval, all the concerns about whether the property will be used and useful to customers can be addressed. The operator would then be entitled to increase its rates consistent with the rate order. Sammons and TCA also recommend that the rate authority have the right to permit staged increases in regulated rates over the period of construction. In this manner, subscribers would not suffer the rate shock of having the full increase added to their bills at the time the plant was fully placed in service. So long as the costs of upgrades can be demonstrated to be prudently incurred, and a demonstration made of the upgrade's future usefulness, the costs would be legitimate. Sammons and TCA would remind the Commission that such a procedure is consistent with the method of rate regulation that was employed prior to the 1984 amendments to the Communication Act. Before the Cable Act removed rate setting authority from most franchise authorities, cable operators typically approached franchise authorities with rate requests based on improvements in the system's facilities. Under the terms of the rate approvals, operators were given certain milestones for completion. If the milestones were met, the operators were permitted to gradually increase rates to finance the necessary construction.

A similar process today will provide the necessary incentive for cable operators to significantly increase their channel capacity. With increased channel capacity many new program services will find the platform necessary to launch their service. Cable operators will also have the financial ability and incentive to provide the upgrades necessary for a fully interactive information superhighway which will provide benefits to all.

IV. CONCLUSION

The NCTA compromise will provide a mechanism for operators to add new programming to existing channel capacity in a financially prudent manner. The compromise also eliminates the impediment that low priced programmers have been facing under the current rules. However, by itself, the compromise does not fully achieve the Commission's twin goals of controlling the price to consumers for regulated programming or of providing incentives to operators to upgrade their existing facilities. The price governors suggested by Sammons and TCA will facilitate a more market driven price for regulated services. The slight change suggested for the streamlined cost of service rules for network upgrades will remove the impediment the existing rules place on operators investing capital in the upgrade and reconstruction of their facilities.

Accordingly, it is respectfully requested that the Commission adopt the proposals contained herein.

Respectfully submitted,

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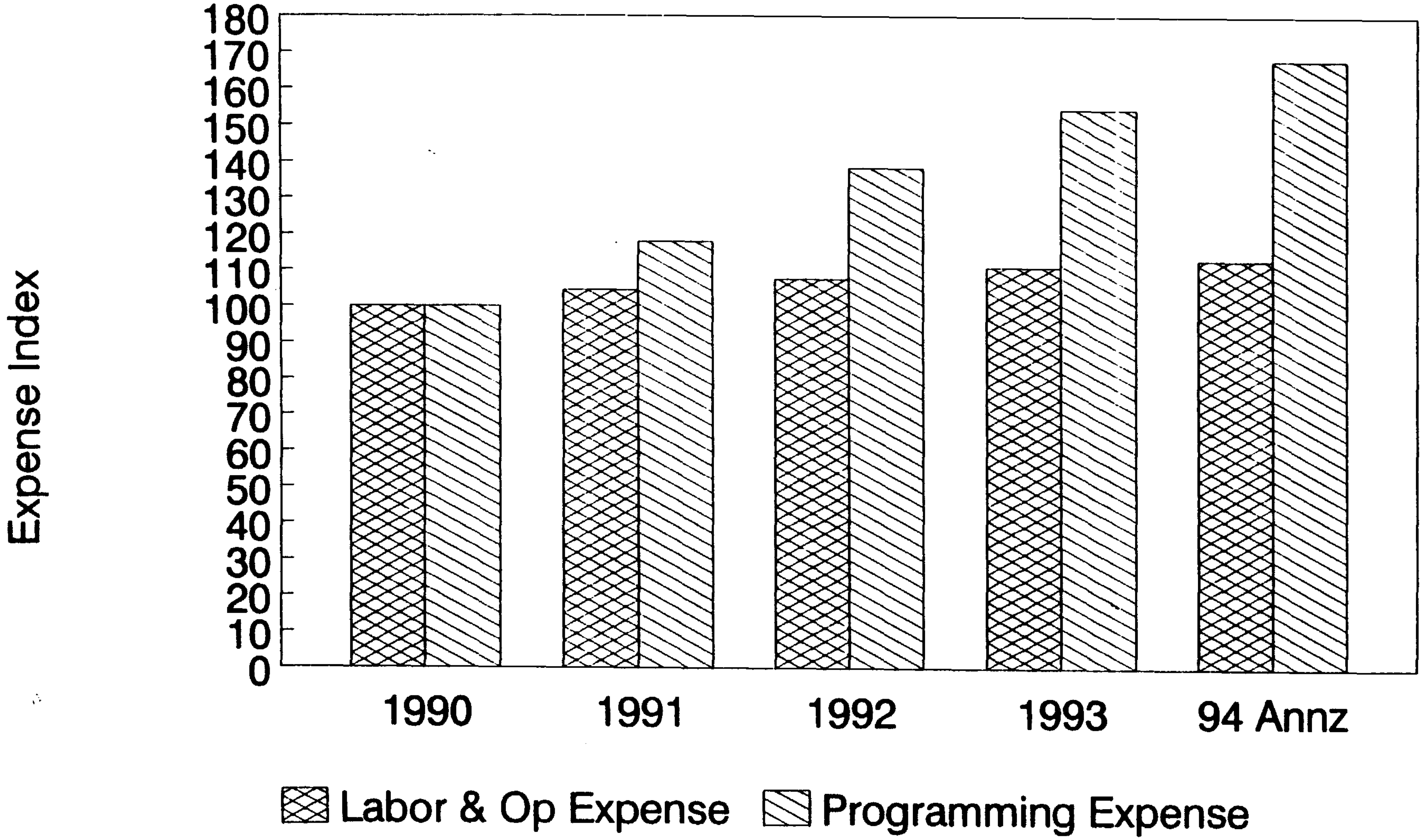
MJP/mcl\sammons\comments.729

ATTACHMENT A

ATTACHMENT A

Sammons Communications, Inc
Growth in Controllable Expenses per Subscriber
v.s.
Growth in Cable Programming Expense per Subscriber
(Shown as a Index with 1990 equal to 100)



Note: 1994 Annualized (Annz) is based on the first 6 months of 1994.

ATTACHMENT B

Ops Side With Sammons, Slam MTV

By KIM MITCHELL

Although some industry executives criticized the way Sammons Communications handled its recent switchout of MTV: Music Television in four systems, the move last week found widespread support from operators ranging from top 10 MSOs to independents.

In the meantime, however, a well-organized consumer campaign against Sammons has begun gaining momentum — garnering prominent placement from local print and TV media and lending support to MTV's contention that the flap will fuel an existing negative image of the cable industry.

The decision of four Sammons systems (two in Pennsylvania, two in Tennessee) to replace MTV with Video Jukebox Network — after what sources on both sides described as several frustrating, fruitless rounds of contract renewal negotiations — garnered a scathing editorial last week in the *Bucks County Courier Times* (circulation 68,000). The editorial board of the Pennsylvania newspaper contended that "pulling the plug on MTV is just one more show of arrogance that says Congress has to act."

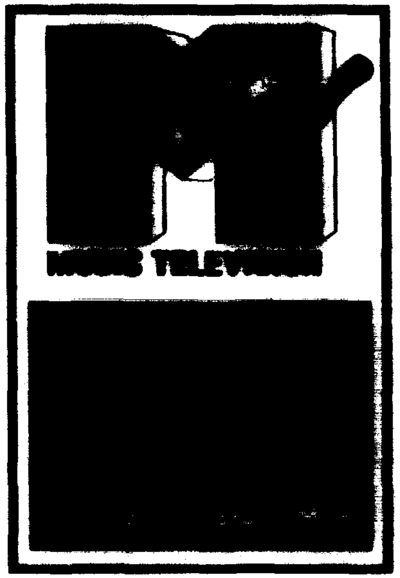
In Tennessee, the office of Sen. Albert Gore received between 50 and 100 phone calls protesting the decision, said Gore spokeswoman Marla Romash. "This is another illustration of how the cable industry takes advantage of the customers it's supposed to serve," she said, adding that the move was just another piece of ammunition in the S 12 arsenal. (Gore is a leading backer of S 12, a cable re-regulation bill now before the Senate.)

Indeed, backed by MTV, leaders of the consumer campaign said they plan to deluge Dallas-based Sammons with petitions and phone calls. Furthermore, they are approaching local media, cable advisory boards and town councils in an effort to have the operator's franchise revoked.

Linda Bane, of Morrisville, Pa., is leading the charge in her community with the help of her husband, attorney David Bane. "We have flyers and petitions all over Bucks County," she said. "I want to do what's best for the township. ... My goal is not to bring another cable company here, but to have MTV put back on."

Bane said her group of 200-300, which calls itself "Viewers Voice for MTV," is urging people to cancel pay services such as Home Box Office, Cinemax, Disney and MTV sister-services Showtime and The Movie Channel if Sammons does not reinstate MTV by February.

Sammons president Mark Weber and other executives did not return phone calls by press time. MTV Networks chairman and CEO Tom Freston said negotiations with Sammons are continuing, but emphasized that his network will do "whatever's necessary to protect its business."



Despite the flap within the four Sammons systems (reaching some 100,000 subscribers), operators industrywide offered staunch support for the move, which followed an offer by the systems to put MTV on a tier.

Ranging from large MSOs to small operators, many pointed out that resentment against MTV is at an all-time high. The network — which can cost operators 11-25 cents per subscriber depending on their size — "is as expensive as CNN, except I don't have a hard time selling local advertising on CNN, and the ratings are a hell of a lot better," said one top 15 operator.

Although MTV contends the annual rate increase of 1 cent per year that Sammons would have had to pay would not even begin until 1993, operators scoffed at the claim, saying that MTV Networks has also raised rates for both Nickelodeon (by one to two cents) and VH-1 (from free or one cent per month to as high as four cents). A programming executive at one MSO described MTV Networks as "a black hole that sucks up your money and doesn't give you anything back."

"Look, I understand [operators'] concerns," said Freston. "If 30 [basic networks] each raise their rates two or three cents it can add up. But the contention that MTV Networks is rate-gouging is totally erroneous. We've always been a moderately priced part of the basic package."

Others expressed resentment over MTV's profitability. "They're making a killing in advertising, and they're making a killing from the operator," said one small independent. "And their idea of long-form programming is stringing together 20 minutes of videos that they get from record companies for free. And now they want us to pay for VH-1? I guess they're better at comedy than we all thought."

But an MTV spokeswoman replied, "We pay record companies millions of dollors a year for our programming and the right to air some videos exclusively."

But even while operators berate MTV for its weak local ad sales, flat ratings, high license fees and onerous penalties for tiering, they acknowledge that other networks share those faults.

"But MTV has another problem those networks don't,"

SEE OPS, PAGE 34

ATTACHMENT B

Cities Get More Assertive On Franchise Renewals

By RACHEL W. THOMPSON

Hal Krisbergh said that early launches using analog techniques and

Get More Assertive on Renewals

FROM PAGE 3

he said, "the consensus is, they're [re-
g more difficult."

Barry Orton, a professor of telecom-
the University of Wisconsin and a city
the upcoming round, the industry's
ing to dovetail with what the cities

dustry wants to undertake upgrades and
crease system reliability and perfor-
eeds more channel capacity to take ad-
tential new revenue streams, such as
and pay-per-view.

on't be contentious, Orton said, "unless
rators are very, very
long as they're putting
heir systems, "I don't
and the cable industry
e very far apart."

nents indicate that the
w capital spending on
es will be a significant
ntion. Particularly in the
ng climate, attempts by
s to exert control
ing short renewal terms
ashes with system operators concerned
zing their investments.

Hellman, senior counsel for Tele-Com-
nc., said the most important issue during
'What's state-of-the-art going to be? And
ied into the term of the franchise."

an, vice president of corporate develop-
vernment affairs for Falcon Cable TV,
ities like the idea of having more channel
don't want to see the cost reflected in

re's no free lunch here," he said. "If we
st X million dollars to rebuild the plant
nse, we're going to have to amortize that
raising the rates maybe 50 cents."

operators, concerns about franchise terms
hand with complaints about consultants,
ors said, even when helpful, prolong the
, because operators often pick up the tab
vices, increase the cost of a renewal.

attorney, who spoke on the condition that
entified, said many consultants are "advising cities to grant as short as possible terms" but at the same time loading up the franchises with items guaranteed to require a rate increase to pay for.

To the extent that cities adopt this approach, he said, "We're likely to see a repetition of the franchising frenzy of the early '80s, where cities forced cable companies to make commitments which may be unrealistic" and later led to disputes.

Pointing to Time Warner's experimental 150-channel cable system in Queens, N.Y., this attorney said he has no doubt he will hear the question, "Why can't we have 150 channels? They have it in Queens."

Lawrence Monroe, CEO of Municon Corp. municipal consultants, doesn't view technology as an issue at all. He said he assumes the cable company needs to upgrade its system for its own purposes, and so removes the issue from the negotiating table on day one.

> Renewals won't be contentious "unless operators are very, very cheap."
> ***Barry Orton, consultant to cities***

That eliminates the cable industry's "historical ability to place the blame" for rate increases on municipal officials, he said, and shifts control back to the municipality. After that, "you're limited only by your imagination" in what you can ask for, he said.

"As a rule, once [the companies] are told that they're not going to be required to rebuild the systems, they get very creative in what they can offer, because they understand that they're going to have to make it worth the city's while" to grant an extended franchise, Monroe said.

One attorney who is a consultant for cities, who spoke on the condition that he not be identified, predicted that the renewal environment will be "very explosive" for the next several years. Rates will continue to climb, and many municipal officials, he predicted, will simply throw up their hands and ask, "What's the point?"

That frustration, combined with the inability to make predictions about technology and regulation, will lead to many shorter renewals by cities that will choose to "revisit [the issue] when the landscape's a little clearer," he said.

This attorney also said he expects municipal ownership to become both a real option "and a real battleground." ■

N... cense agreement with The Family Channel for use of BMI members' music, good through June 30, 1992.

As part of the agreement, the parties will abandon legal action now pending in a New York federal court. According to BMI vice president Marvin Berenson, BMI no longer has any litigation pending against cable networks.

The license is retroactive and extends through June 30, 1992, with an option for renewal. BMI, whose music library includes more than 2 million compositions, also recently negotiated an agreement with Video Jukebox Network.

Berenson said there are still "some" cable programmers who have not yet obtained performance licenses from BMI, but that those networks include "very few majors." ■

John Frey, MTV Exec, Dies

KEY WEST, Fla. — John Frey, the Los Angeles-based national ad sales account director for MTV Networks who had been slated to become its West Coast syndication director this year, died of cancer here at age 52.

Frey, a native of Chicago, had worked in advertising at the *Chicago Sun-Times* before moving to broadcast sales. He had worked for NBC in the top three TV markets as well as several independent TV stations in Los Angeles. He joined MTV in 1986.

In lieu of flowers, the family has requested that donations be made to the Advertising Industry Emergency Fund. ■

Ops Side With Sammons, Slam MTV

CONTINUED FROM PAGE 3

said one. "Most operators are older guys. They just don't watch MTV, so they don't relate to it. They don't understand the value, as it were."

The only criticism operators offered about the switchout regarded Sammons' approach. Sammons backed its decision with a consumer poll that surveyed only a small percentage of billpayers rather than entire households. In addition, the MSO's last-minute notification of community officials and consumers did not help to defuse the public outcry, operators said.

Like Sammons, TCA Cable Inc. also disconnected MTV from about 45 systems on June 30, following unsuccessful contract renewal negotiations. A top TCA executive for the company said that "despite MTV agitation of the matter," consumer outcry died down after about two months and that the company suffered minimal long-term setbacks as a result (although TCA's fourth-quarter earnings were affected; see related story page 27).

TCA is offering MTV as a free, optional service in those systems, and between 45 and 75 percent of subscribers — depending on the system — have opted to receive it, the executive said. ■

ATTACHMENT C

Lobbying in the States — NECTA's Velvet Glove

By RACHEL W. THOMPSON

New England Television Association vice president Tom Steel recalls the first time his association leveraged its grassroots strength to fight a cable sales tax.

It was in 1985 in Massachusetts, and NECTA had persuaded a cautious board to stuff customers' bills with a prepaid postcard urging them to signal loud and clear to their elected officials what they thought of the tax. When Steel delivered over 75,000 postcards to the legislature, the response was dramatic.

"Go ahead and stuff your bills!" bellowed the House chairman of the joint government regulations committee. Steel says the lawmaker grabbed him by the throat, shoved him up against a wall and promised, "I'll get you. You'll never get another piece of legislation through (this committee)."

Not only was the tax dead on arrival, but NECTA pulled the addresses off the postcards before forwarding them to the legislature and tucked away a database of supporters for the next time around.

In hindsight, Steel says, it was one of NECTA's best years.

NECTA let the guns go again in 1989 when the Dukakis administration proposed increasing franchise fee pass-throughs. NECTA enlisted cable systems across the state to produce and deliver to subscribers a blistering anti-tax message backed up with a direct-mail piece, and held a press conference on the statehouse steps. The measure was scuttled after the leadership was deluged with postcards and

SEE LOBBYING, PAGE 38

TCI Subs Clamor for Encore

By KIM MITCHELL

DENVER — Encore and Tele-Communications Inc. last week shook off their recent marketing controversy and recorded 398,535 telephone orders for the new mini-pay service, representing more than 6 percent of all eligible TCI customers.

Also, Encore's promise to drive pay sales will be tested this week when TCI offers Encore and Home Box Office, or Encore and The Disney Channel for $6.95 to customers who maintain their current level of service. Those customers can also buy all three networks for one year for $12.90 a month, as part of a new direct-mail campaign concocted by TCI.

Larry Carlton, executive vice president and COO of TCI Cable Management, said TCI had also approached Showtime with the idea, but executives at that network declined to participate.

Before TCI could launch its multipay test, it first had to alert customers to the change of plans on how Encore would be sold. The network is currently being shown free of charge in eligible TCI systems.

Under the guidance of CPSI Marketing Services Inc., TCI had one week to put together a marketing strategy after its June 14 announcement that it was dumping its controversial negative-option marketing campaign for Encore in favor of a positive-option approach.

SEE TCI, PAGE 38

NEARLY A MILLION SERVED: Despite the controversy surrounding TCI's marketing of Encore, the publicity surrounding the pay service helped the MSO log nearly a million calls from people inquiring about Encore.

ATTACHMENT C

TCA Doesn't Want Its MTV

By KIM MITCHELL

MTV: Music Television will lose 450,000 subscribers next week as Texas-based TCA Cable TV was expected to drop MTV on Sunday from its basic cable lineup in 53 systems — apparently because the MSO wanted to scramble MTV and the network refused.

Fred Nichols, president of TCA Cable, said his company wanted to scramble MTV's signal and make it available, at no extra charge, only to homes that requested the network.

"This is something we've been struggling with for years," said Nichols. "We serve a lot of rural communities in Texas, Arkansas and Louisiana, and people there are very unhappy with the amount of sex and violence in music videos. (MTV) knows this, because I've been telling it to them for the past three years."

But MTV contended that Nichols' decision to drop the network had more to do with TCA's renegotiations of its contract than anything else. "We're negotiating over fees. This has nothing to do with content," said an MTV spokeswoman.

Tom Freston, chairman and CEO of MTV Networks, said his network's content standards were no worse than those found on broadcast television. "In fact," he said, "I would say our standards are higher. We are quite responsible in how we program this network."

MTV this year refused to play a Madonna video for the song "Justify My Love."

SEE TCA, PAGE 36

INSIDE

TCA / MTV Corres

MTV Goes Off the Air in Japan

NEW YORK — MTV Japan, a magazine-style program combining videos from MTV: Music Television with Japanese performers, will no longer be broadcast on Tokyo Broadcasting System. [illegible]

TCA Cable Doesn't Want Its MTV

CONTINUED FROM PAGE 1

Nichols, who confirmed that he has been renegotiating his contract renewal — which includes a price hike — said he thought one way to appease concerned consumers would be to scramble the signal. "It was at that point our negotiations broke off," he said. "(MTV) absolutely refused to consider it."

Freston defended the decision, saying that because of advertising commitments, "no one in the basic cable business can permit his network to be sold a la carte ... it would fundamentally undermine our business." He also said it would set a bad precedent for other MSOs.

He added cable operators have an obligation to provide lock boxes to customers with programming content concerns.

Freston said MTV had received hundreds of phone calls from TCA subscribers as a result of the operator's notifying local media of its decision. Nichols said TCA system managers have so far reported only a negligible number of calls from irate subscribers.

Nichols said TCA will replace MTV with eight or 10 networks he already is carrying in some systems — such as E! Entertainment Television, American Movie Classics and Home Sports Entertainment. In some instances, he hopes to replace the network with VH-1, which he said is far less offensive than MTV.

It is also cheaper, at 4-6 cents on the rate card, than MTV's rate card of approximately 24-25 cents, which is scheduled to rise a penny a year for the next few years, according to operator sources.

TCA currently carries VH-1, Nickelodeon and Nick at Nite on its basic cable lineup, and contract renegotiations for those networks continue, he and Freston confirmed.

Nichols said he did not anticipate difficulty in renegotiating for those networks. "I don't think it ought to be a big deal, I don't want to be crossways with MTV Networks," he said. "It was just something we couldn't get together on. They have their reasons. I have mine."

Freston said he did not anticipate other operators dropping MTV.

Some operators have complained that MTV's rates are continuing to climb while its ratings decline, making the network less valuable as a local ad sales tool. Other operators noted that local ad sales only make up 3 to 5 percent of revenues and that MTV still is an important part of the basic cable lineup.

In the first quarter, MTV earned a 0.6 rating in primetime and 0.5 for the entire day, the same as the year before, according to Nielsen Media Research's NCAR ratings.

A few months ago, a small South Dakota operator, Satellite Cable Services in De Smet, dropped MTV, saying it objected to a rate hike (*Multichannel News*, Feb. 25, page 2).

Michael Pandzik, president of the National Cable Television Co-operative, which negotiates for about 2,000 small systems, said he doubts that rural operators in conservative towns would get much negative reaction from dropping MTV.

"There's not another service I know of that's gotten more negative feedback to cable system operators than MTV over the [illegible]," said Pandzik, whose co-op has unsucc[illegible]ly been trying to negotiate with MTV to obtain volume discounts for its members, which include some TCA systems.

He said other services are half the price of MTV, yet have higher ratings.

"You're going to find cable operators over the next few years rearranging program lineups, dropping services that either don't do well in the ratings or have other problems like MTV. I think it's a healthy sign; it's good for the cable industry and its good for subscribers," Pandzik said.■

Cable Report Filed

WASHINGTON — A report on S 12, the Senate's major cable bill, was expected to be filed last Friday, clearing the way for the bill to be debated on the floor.

The bill could be voted on sometime in July. The report doesn't contain any surprises, aides said. Still undecided is whether must-carry protections in the bill will be taken away from home shopping stations.■

VJN To Set Up Seven Channels in N.Y.

NEW YORK — Video Jukebox Network will create seven individual program feeds for its launch in New York City July 1.

The network will create five separate "jukeboxes" for Manhattan Cable and two for Paragon Cable — each will serve a separate section of the city, said John Robson, director of programming and production for the network. The separate feeds will [illegible]pear on channel 50 on both services [illegible] low subscribers in different parts of the city a chance to choose the videos that most appeal to them, he added.

The network will be placed on the two systems' standard plus tier and will be offered free to subscribers in July, said Robson. After 30 days, the tier will cost subs $1.■

[redacted]

CERTIFICATE OF SERVICE

I, Marianne C. Lynch, certify that I have this 29th day of July, 1994, sent by regular United States mail, postage prepaid, a copy of the foregoing "Reply Comments" to:

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